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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 HENRY VAWTER, et al.,

11 Plaintiffs,

12 v.

13 QUALITY LOAN SERVICE  
14 CORPORATION OF  
WASHINGTON, et al.,

15 Defendants.

CASE NO. C09-1585JLR

ORDER GRANTING IN PART  
MOTIONS FOR DEFAULT  
JUDGMENT

16 **I. INTRODUCTION**

17 Before the court are Plaintiffs Henry and Rose Vawter's renewed motions for  
18 entry of default judgment against Defendants Twin Capital Mortgage, Inc. ("Twin  
19 Capital") and Paul Financial, LLC ("Paul Financial"). (Dkt. ## 63, 64, 67.)<sup>1</sup> The court  
20 has considered the motions, the declaration filed in support thereof (Huelsman Decl.

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22 <sup>1</sup> The motion at docket number 64 is a duplicate of the motion at docket number 63.

(Dkt. # 66)), as well as the records and files herein, and GRANTS in part and DENIES in part the motions as stated below.

## II. BACKGROUND

On January 12, 2010, counsel appeared in this litigation on behalf of Paul Financial. (Dkt. # 8.) On February 22, 2010, counsel appeared in this litigation on behalf of Twin Capital. (Dkt. # 25.) By order dated February 4, 2010, counsel for Paul Financial withdrew from representing Paul Financial in this matter. (Dkt. # 16.) By order dated May 24, 2010, counsel for Twin Capital withdrew from representing Twin Capital in this matter. (Dkt. # 38.)

Local Rule W.D. Wash. GR 2(g)(4)(B) requires a business entity, other than a sole proprietorship, to “be represented by counsel.” *Id.* Further, failure to obtain a replacement attorney may result in the entry of default against the business entity. *See id.* Therefore, on June 2, 2010, the court ordered both Paul Financial and Twin Capital to file a notice of appearance identifying new counsel by Friday, June 11, 2010. (June 2, 2010 Order (Dkt. # 41).) Neither Defendant ever acquired new representation in this matter. Consequently, an order of default was entered against Paul Financial on June 16, 2010 (Dkt. # 46) and against Twin Capital on July 6, 2010 (Dkt. # 48).

On January 21, 2011, Plaintiffs filed motions for the entry of default judgment against Paul Financial and Twin Capital. (Dkt. ## 59 & 61.) On March 7, 2011, the court denied the motions on several grounds. (March 7, 2011 Order (Dkt. # 62).) First, Plaintiffs failed to file an affidavit or declaration of service, or other evidence on the record, indicating that they attempted service on or provided notice to either Paul

1 Financial or Twin Capital as required under both Federal Rule of Civil Procedure  
2 55(b)(2) and Local Rule W.D. Wash. CR 55(b)(2). (March 7, 2011 Order at 2-4.) In  
3 addition, the court found that the Vawters provided no basis, rate, or method of  
4 calculation for their request for prejudgment interest. (*Id.*) The court also found that  
5 although Plaintiffs recited in their motion that their request for attorneys fees and costs  
6 was supported by “the Declaration of Melissa A. Huelsman re: Attorneys Fees,” no such  
7 declaration was filed with the court. (*Id.*) Accordingly, the court denied Plaintiffs’  
8 motions for entry of default judgment, but permitted Plaintiffs the opportunity to correct  
9 the noted deficiencies and reapply for default judgment against these two defendants  
10 within ten days of the court’s March 7, 2011 order. (*Id.*)

11 On March 17, 2011, Plaintiffs filed two identical copies of their renewed motion  
12 for default judgment against Paul Financial (Dkt. ## 63, 64). On March 18, 2011, one  
13 day after the deadline set by the court in its March 7, 2011 order, Plaintiffs filed their  
14 renewed motion for default judgment against Twin Capital (Dkt. # 67). Both motions are  
15 supported by the declaration of Melissa A. Huelsman. (Huelsman Decl.) In addition,  
16 Ms. Huelsman filed a declaration attesting to service of the motions for default judgment  
17 upon Paul Financial and Twin Capital. (Dkt. # 66.)

### 18 III. ANALYSIS

19 Entry of default judgment is left to the court’s sound discretion. *DIRECTV, Inc. v.*  
20 *Hoa Huynh*, 503 F.3d 847, 852 (9th Cir. 2007) (citing *Aldabe v. Aldabe*, 616 F.2d 1089,  
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1 1092 (9th Cir. 1980)).<sup>2</sup> Because granting or denying relief is within the court's  
2 discretion, a defendant's default does not automatically entitle a plaintiff to a court  
3 ordered judgment. *See Aldabe*, 616 F.2d at 1092-93; *see also Philip Morris USA, Inc. v.*  
4 *Castworld Products, Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003).

5 In *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986), the Ninth Circuit set  
6 out factors for the court to consider when determining the appropriateness of entering  
7 default judgment. Factors which may be considered include: (1) the possibility of  
8 prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the  
9 sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the  
10 possibility of a dispute concerning material facts, (6) whether the default was due to  
11 excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil  
12 Procedure favoring decisions on the merits. *Id.* When considering the *Eitel* factors, all  
13 factual allegations in the plaintiff's complaint are taken as true, except for those related to  
14 damages. *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002);  
15 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). The court is not  
16 required to make detailed findings of fact. *Id.*

17 The court finds that the first *Eitel* factor weighs in favor of granting the Vawters'  
18 renewed motions for default judgment. The court finds that there is a possibility of

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20 <sup>2</sup> Because the Vawters have filed evidence of service of their renewed motions for  
21 default judgment upon Twin Capital and Paul Financial in compliance with the local and  
22 federal rules (Dkt. # 66), the court finds that the Vawters have met the necessary notice  
requirement prior to entry of default judgment against these defendants. *See* Fed. R. Civ.  
P. 55(b)(2); Local Rules W.D. Wash. CR 55(b)(2).

1 prejudice to the plaintiff if default judgment is not granted. Taking the well-plead  
2 allegations of the complaint as true, the court concludes that the Vawters have suffered  
3 economic loss as a result of Twin Capital's and Paul Financial's failures to provide  
4 accurate statements concerning the true costs associated with their home refinance loan.  
5 Accordingly, the Vawters are entitled to be made whole.

6 The court also finds that *Eitel* factors two, three, and five also weigh in favor of  
7 the entry of default judgment against Twin Capital and Paul Financial. The well-plead  
8 facts in the complaint, along with the declaration of Melissa Huelsman (Dkt. # 65),  
9 establish the merits of the Vawters' case against these two defendants, and there is no  
10 dispute concerning the material facts. With regard to Twin Capital, the well-pleaded  
11 facts indicate that Twin Capital was a mortgage broker licensed with the State of  
12 Washington, and that it engaged in mortgage brokering by providing the Vawters with a  
13 mortgage loan. Thus, Twin Capital was required to comply with Washington's Mortgage  
14 Broker Practices Act ("MBPA"), RCW ch. 19.146. Twin Capital failed to make certain  
15 disclosures to the Vawters as required by RCW 19.146.030 and RCW 19.146.0201, and it  
16 collected and charged a fee in violation of these same provisions. Violations of the  
17 MBPA are per se violations of the Washington Consumer Protection Act ("CPA"), RCW  
18 19.86.100. *See* RCW 19.146.100. The Vawters allege that these same acts also  
19 constituted violations of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601, *et seq.*

20 With regard to Paul Financial, the well-pleaded facts of the complaint indicate that  
21 Paul Financial was a consumer loan company operating within Washington State, and  
22 that it engaged in mortgage lending by providing the Vawters with a mortgage loan. The

1 Vawters assert that Paul Financial violated the CPA by failing to provide certain  
2 disclosures as required by the Washington Consumer Loan Act (“CLA”), RCW ch.  
3 31.04, and TILA. Violations of TILA constitute violations of the CLA, RCW 31.04.027,  
4 and violations of CLA are per se violations of the CPA, RCW 31.04.208.

5 The fourth *Eitel* factor, the sum of money at stake, also favors the entry of default  
6 judgment. The Vawters seek \$14,383.15 in damages against Twin Capital with regard to  
7 the charging of fees not properly disclosed in advance of the loan signing. In addition,  
8 they seek \$2,000 in statutory damages under TILA, and \$10,000 under the CPA (which  
9 allows for treble damages up to \$25,000),<sup>3</sup> for a total award of \$26,383.15 against Twin  
10 Capital. The Vawters seek \$548.95 in damages against Paul Financial with regard to the  
11 charging of fees which were not disclosed correctly in advance of the loan signing. In  
12 addition, the Vawters seek \$2,000 in statutory damages under TILA, and a trebling of  
13 damages under the CPA, for a total of \$4,195.80.<sup>4</sup> In general, default judgment is  
14 disfavored if there are large sums of money involved. *Eitel*, 782 F.2d at 1472. The  
15 Vawters’ modest requests for damages here favor the entry of default judgment.

16 The sixth factor also favors entry of default judgment. The entry of default against  
17 Twin Capital and Paul Financial was not due to excusable neglect, but rather a  
18 withdrawal of their counsel and failure to secure new counsel. A business entity must be

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20 <sup>3</sup> Although the CPA permits the trebling of actual damages up to \$25,000, *see* RCW  
19.86.090, the Vawters ask for only \$10,000 under this provision. (*See* Dkt. # 67 at 10.)

21 <sup>4</sup> The Vawters seek \$10,000 under the CPA against Paul Financial (*see* Dkt. # 67 at 9),  
22 but the court is at a loss as to how a trebling of their \$548.95 in damages could amount to more  
than \$1,646.85.

1 represented by counsel or subject itself to the entry of default. Local Rules W.D. Wash.  
2 GR 2(g)(4)(B). When neither Twin Capital nor Paul Financial secured new  
3 representation, the court properly entered default orders against them. (*See* Dkt. ## 41,  
4 45, 46, 47, 48.)

5 The seventh factor, the strong policy favoring decisions on the merits, will almost  
6 always disfavor the entry of default judgment. Nevertheless, because the other factors  
7 favor the entry of default judgments, the court finds on balance that entry of default  
8 judgments against Twin Capital and Paul Financial is appropriate.

9 As noted above, the sum the Vawters seek against Twin Capital includes:  
10 \$14,383.15 in damages, plus \$2,000 in statutory damages under TILA, and \$10,000 under  
11 the CPA for a total award of \$26,383.15. The court finds that this amount of damages is  
12 reasonable and supported by the factual record. (*See* Huelsman Decl. (Dkt. # 65).) The  
13 sum the Vawters seek against Paul Financial includes: \$548.95 in damages, \$2,000 in  
14 statutory damages under TILA, and a trebling of damages under the CPA. Although the  
15 Vawters state that they seek \$10,000 against Paul Financial under the CPA, the court  
16 finds that an appropriate trebling of damages under the CPA would total only \$1,646.85.  
17 Thus, the Vawters' total damages claim against Paul Financial amounts to \$4,195.80.  
18 The court also finds that this amount of damages is reasonable and supported by the  
19 record. (*See id.*)

20 Although the Vawters request an award of attorneys fees and costs against both  
21 Twin Capital and Paul Financial, they fail to provide any evidentiary support for such a  
22 request. Their motions recite that their requests are supported by "the Declaration of

1 Melissa A. Huelsman re: Attorneys Fees, which is being filed concurrently herewith.”  
2 (Dkt. # 67 at 10; Dkt. # 64 at 10.) However, no such declaration has ever been filed with  
3 the court. The court previously brought the failure to file the supporting declaration to  
4 the Vawters’ attention (Dkt. # 62 at 4), but the Vawters have failed to correct this  
5 evidentiary deficiency. Accordingly, the court denies the Vawters’ request for attorneys  
6 fees and costs.

7 In addition, although the Vawters seek an award of prejudgment interest against  
8 both Twin Capital and Paul Financial, they fail to provide the court with a basis for this  
9 award, an appropriate rate of interest, and a specific method of calculation. The court  
10 previously brought this deficiency to the Vawters’ attention (*id.*), but they again have  
11 failed to correct this deficiency. As a result, the court denies the Vawters’ request for  
12 prejudgment interest as well.

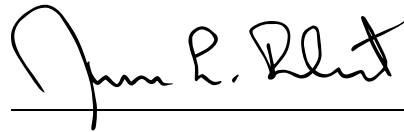
#### 13 IV. CONCLUSION

14 For the foregoing reasons, the court GRANTS in part the Vawters’ second motion  
15 for default judgment against Paul Financial (Dkt. ## 63 & 64) in the amount of  
16 \$4,195.80, and GRANTS in part the Vawters’ second motion for default judgment  
17 against Twin Capital (Dkt. # 67) in the amount of \$26,383.15. The court DENIES the  
18 Vawters’ requests for attorneys fees and costs and prejudgment interest against both  
19 defendants. The court further orders the Vawters to mail a copy of this order to Twin  
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1 Capital and Paul Financial within seven days of the date of this order.

2 Dated this 27th day of April, 2011.

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5 JAMES L. ROBART  
6 United States District Judge  
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